

ORDER OVERRULING OBJECTIONS, ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION, AND DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Before the Court are the Findings, Conclusions, and Recommendation (ECF No. 7) of the United States Magistrate Judge to deny the Petition for a Writ of Habeas Corpus filed by Petitioner in this case. On July 31, 2020, the Court received Petitioner's objections to the findings, conclusions, and recommendation that was mailed on July 27, 2020. *See* ECF No. 10.

Petitioner argues that the Magistrate Judge erred in denying his request for a reduction in sentence because the First Step Act of 2018 applies to prisoners in both federal and state prisons. *Id.* at 2–3. However, as emphasized by the Magistrate Judge, "the First Step Act applies only to *federal* prisoners serving *federal* sentences pursuant to a *federal* conviction for a violation of a *federal* criminal law. *State* prisoners serving *state* sentences of imprisonment as a result of a *state* conviction for a *state* criminal offense do not benefit from this federal law." ECF No. 7 at 2. The issue is under *which jurisdiction*—federal or state—that Petitioner was convicted and sentenced—not *which prison* the Petitioner is serving that sentence.

After making an independent review of the pleadings, files, and records in this case, as well

as Petitioner's objections, the Court concludes that the findings and conclusions of the Magistrate

Judge are correct. It is therefore ORDERED that Petitioner's objections are OVERRULED, the

findings, conclusions, and recommendation of the Magistrate Judge are ADOPTED, and the

Petition for a Writ of Habeas Corpus is DENIED.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure

22(b), Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts,

and 28 U.S.C. § 2253(c), the Court denies a certificate of appealability because Petitioner has

failed to make "a substantial showing of the denial of a constitutional right." Slack v. McDaniel,

529 U.S. 473, 484 (2000); see also Hernandez v. Thaler, 630 F.3d 420, 424 (5th Cir. 2011). The

Court ADOPTS and incorporates by reference the Magistrate Judge's findings, conclusions, and

recommendation filed in this case in support of its finding that Petitioner has failed to show (1)

that reasonable jurists would find this Court's "assessment of the constitutional claims debatable

or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid

claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its

procedural ruling." Slack, 529 U.S. at 484.

If Petitioner files a notice of appeal, he may proceed in forma pauperis on appeal. See

Federal Rule of Appellate Procedure 24(a)(3).

SO ORDERED.

August <u>///</u>, 2020.

MAN JUSMAN MATTHEW J. KACSMARYK

INITED STATES DISTRICT HIDGE

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